

**Minutes for the State of North Carolina
Forensic Science Advisory Board Meeting**

August 4th, 2016

North Carolina State Crime Laboratory
Raleigh, NC

Board members present: State Crime Laboratory (SCL) Director John Byrd, Kermit Channell (Chair), Michael Coble, Tracey Dawson Cruz, Demi Garvin, David Hinks, Mike Jiroutek, Tim Kupferschmid, Alka Lohmann, Peter Marone, Deborah Radisch (all via telephone except Director Byrd)

Not present: Adam Becnel, Christopher Palenik, Bethany Pridgen, Ronald Singer

Others in attendance: Anna Baxter (via telephone), Rice Cox, John Dilday, Alison Gantt, Aaron Joncich, Zach Kallenbach, Karen Morrow, Jessica Pappas, Elizabeth Patel, Timothy Suggs, Amanda Thompson, Jennifer West, Jody West (SCL); Stormie Forte (SCL Ombudsman); Sarah Rackley Olson, NC Indigent Defense Services (via telephone); NC DOJ Legislative Liaison Christy Agner (via telephone), Narcisa Woods, FSAB Counsel Matthew Boyatt (via telephone), SCL Counsel William Hart (NC DOJ)

Meeting was called to order at 1:00 pm. Chair Kermit Channell noted that he would have to leave the call shortly and that Vice-Chairman Michael Coble would lead the meeting in his absence. Director Byrd moved that the minutes from the previous meeting be approved as submitted. Motion was seconded by Demi Garvin and passed in a unanimous vote.

Update on Quality Document Review

Chairman Channell thanked Garvin and Tracey Dawson Cruz for volunteering to co-chair the review process for Toxicology and DNA, and asked them for brief updates.

Garvin: Toxicology working group members received an email earlier this summer laying out a timeline for review of the toxicology manuals. Goal was to have about 50% of the documents reviewed by today's meeting. No comments from working group members have been received yet. Garvin asked members participating in today's call to weigh in RE: how it's going and whether the timeline is realistic.

Member Alka Lohmann: Deadline is reasonable. Have started to review and everything looks good, haven't seen any major issues. Have a couple of minor things, will pass along to Garvin.

Dawson Cruz: DNA working group, which is reviewing the database protocol, also received a timeline email. Heard back from two people on her working group. Waiting for feedback from the rest, and still needs to do her own review. Will collate comments as they arrive. If anyone has questions, let her know. Will follow up individually/directly with the people she has not heard from yet.

Chairman Channell: On the first day of the next board meeting the Toxicology and DNA Database working groups will review, with the respective staff in those disciplines, the manual and the comments that have been submitted. Good opportunity for bench-level analysts and supervisors to interact with the board. The formal FSAB meeting will take place on the Day Two of the next board meeting.

Would like to see the working groups do reviews, in addition to assessing the manuals. Then consolidate thoughts at the official board meeting on Day Two. Also, identify other disciplines that need attention

because they are up for review. Asks Director Byrd and SCL staff to start thinking about which other manuals need to be examined next, to help FSAB get ahead of the game and formulate a plan. These reviews could be done with the current working groups, or the groups could be shuffled. Consider doing two disciplines per working group next time, to help get through the process more quickly.

Planning for Next Meeting

The board set Thursday, November 3rd at 8:30 AM for its next meeting. Tuesday November 1st will be a travel day. FSAB members will meet with subcommittees and SCL staff on Wednesday November 2nd.

Chairman Channell reminded working group members to submit their comments to Garvin and Dawson Cruz two weeks prior to the November meeting, then left the call. Vice Chair Michael Coble, now presiding, recognized SCL Director Byrd for his report.

Director's Report

The Director touched on bolded items in his PowerPoint:

* House Bill 357, which goes into effect October 1st, allows admission of toxicology affidavits into evidence in lieu of live testimony by lab analysts. Appellate courts will decide its fate; until then it's unclear how it might impact toxicology staff. Legislative Liaison Christie Agner was recognized for her work in shaping the bill and getting it passed.

* Under current law, a state worker attains career employee status after a 1 year on-the-job probation period. Law enforcement and a few other categories are exempt. SCL requested that the exemption be expanded to include forensic scientists because of the length of time it takes to train them. Legislation approving this change went into effect July 11th and will be a big help in the hiring process.

* Planning is underway for NC Forensic Science Week, September 19-23. SCL outreach will include an open house along with Boy and Girl Scout troops visiting to earn their Forensic Science merit badges.

* The background check process for potential new hires is under review, will be strengthened.

* A working group has formed to begin detailed planning for the move from the current western NC offices to the new Western Regional Laboratory. Move will be performed in phases to avoid a complete shutdown of operations. Moving the equipment and instrumentation is challenging, and contractors will be engaged for that task.

* SCL approved a new drug screening policy last year but was unable to implement it due to budget constraints. Funding is now available and implementation is moving forward. NC has an existing service contract for drug screening; SCL is working with the contractor on administrative requirements.

* Starting January 2017 there will be a new evidence submission policy. SCL had hoped to implement a policy requiring hand-to-hand transfer of evidence from law enforcement to SCL. However, small departments and those in extreme eastern and western NC resisted for budgetary/manpower reasons. Following a productive discussion with sheriffs and chiefs of police, the new policy will now request (rather than require) hand-to-hand transfer. Small/geographically remote agencies will be allowed to use NC's State Courier Service. State Courier Service will give agencies a discount and is setting up a

special process for handling evidence, in order to maintain its integrity. If an agency prefers to use USPS instead of the State Courier Service, they must use registered mail so packages can be tracked.

Also as a part of the new policy, all agencies will now be required to pre-log their submissions online via Forensic Advantage. Makes the overall process faster and more efficient while improving its quality. Previously, pre-logging was optional. Under the new policy SCL also agrees to hold all evidence for pickup after testing is completed, rather than using the Courier Service or USPS to return it. Agencies are requested to pick up within 90 days of the date of the published lab report, and required to pick up within 180 days. All chiefs and sheriffs will soon receive a letter spelling out the changes.

* Digital Evidence Analysts must review voluminous amounts of child pornography, which is extremely stressful. SCL is in the process of training Noel, a therapy dog, who will be assigned to that unit. Noel will be restricted to a limited area and will enter/exit the building through a side door. Board members will have the opportunity to meet Noel at the November meeting.

RE: the Director's SMART objectives, Director Byrd stated that SCL probably got its case inventory below 15,000 this week, about a month ahead of goal. Turnaround time continues to drop albeit much more slowly. Still working toward the goal of getting it below 180 days. The balance of the goals listed in the SMART objectives will be re-set for 2016-2017.

RE: Fiscal Resources, the Director reminded the board about unfunded mandates contained in the 2011 Forensic Science Act including Accreditation, Certification/Training, SCL's Ombudsman, and the FSAB.

Fee revenues are increasing but three receipt-funded positions are still empty due to insufficient funds.

General Assembly actions:

* Did not grant SCL request for a special revenue reserve fund; SCL will request again next year.

* Appropriated almost \$1.1 million in nonrecurring funds for the Western Lab; most will go toward DNA equipment. Also funded a new position there, an HVAC technician.

* Did not provide funds for moving to the new Western Lab. SCL will have to use lapsed salary money. Those funds will also cover some furniture.

* Appropriated \$640,000 in nonrecurring funds for additional equipment needs in Raleigh and Greensboro labs.

* Appropriated almost \$2.2 million for outsourcing forensic analysis services including toxicology and DNA. Director anticipates this will be the last year funding will be needed for outsourcing. Nine toxicologists are currently in training and will complete their training around the end of the year.

Overall SCL saw a 19.2% increase in funding, one of the largest increases for any state agency. Lawmakers acknowledging that a state-of-the-art laboratory requires expenditures for equipment and supplies, and salaries sufficient to retain high quality employees.

Director announced new members of SCL management team. Amanda Thompson was named Assistant Director for Administrative Operations, position previously held by Deena Koontz who retired. Koontz and Thompson worked in tandem for a period, to guarantee a smooth handover. Zach Kallenbach was promoted to fill Thompson's position as Manager for the DNA Database. Anna Baxter was promoted to fill the vacancy left by the retirement of Forensic Science Manager Joe Reavis at the Western Lab.

Baxter presented photos showing progress at new Western Lab. Brickwork is completed, windows are going in now. Will probably be hanging drywall in September. Building is about 50% complete.

AD Thompson gave an overview of administrative operations: Bids are being taken today for renovation of the first floor of the administrative area in the SCL, the first major changes in the area since the building opened in 1998. SCL also got an estimate on renovating the 4th floor drug chemistry and toxicology sections, swapping individual suites for more common areas. Architect projects cost at \$3.9 - 4 million. Paperwork to request funding is complete and will be submitted at the appropriate time.

Director Byrd delivered the technical operations report for Pete Ware, who is on leave. SCL is down to 15,118 cases on hand - a reduction of 9,455 since January 1st and the lowest inventory since the early 1990's. Managers have expressed concern about what will happen when they catch up. However, there was a 7.8% increase in evidence submissions in 2015-16. Submissions are increasing, but SCL is able to handle them while still significantly reducing the backlog.

Tim Kupferschmid: West Virginia University researcher says for every 1% decrease in the turnaround time/lead time, you'll see a 1.2% increase in case submissions. Real increase in submissions will come when the lead time decreases.

Byrd: Timely comment. We've been talking a lot about lead time recently.

Continuing:

- * Internal audit associated with accreditation will start this month and go through the end of the year.
- * DOJ has approved the move to RFID in the evidence unit, and funding is lined up. Working closely with Information Technology Department. Accepting bids in mid-August.
- * Anticipating moving into the new Western Lab in early spring of 2017.
- * 52% decrease in case inventory since August 2015. Director credits the SCL staff for getting new employees trained and working cases. Over the last 8 - 10 months SCL is consistently completing more cases than are being submitted, which is the key to reducing inventory.
- * RE: toxicology outsourcing, batch # 19 was sent this week. Over \$1 million in outsourcing in 2015-16. Ombudsman Stormie Forte is working with prosecutors and the contractor NMS labs, and continues tracking/monitoring these cases. Thirty-seven court dates are scheduled this year, in 15 counties. Overall (cases involving SCL staff as well as cases involving NMS employees), about 3% of cases end up requiring testimony.

* Number of employees in training has dropped significantly. At Triad Lab and Western Lab, all drug chemists are now trained and operational. Some toxicologists in Raleigh and Western Lab still undergoing training. Many of those still in training will finish prior to the end of the calendar year.

Director Byrd turned the meeting back over to Vice-Chair Coble, who noted the good news about decreased inventory and the momentum toward reducing the backlog in toxicology.

Pete Marone: How do the SCL's turnaround times look currently?

Byrd: We look at the numbers monthly, and they fluctuate a bit. Some disciplines are about 180 days, others are longer. I will gather the numbers and send them to the members, along with some explanatory language. We measure it differently than some others do, and that will be explained in the message I send to the members.

Comment from Sarah Rackley Olson, NC Indigent Defense Services: The Defense bar has had a lot of questions regarding the toxicology outsourcing project. Some attorneys weren't aware of the project and were surprised to see reports coming from an out-of-state lab. Others have questions about how to read the NMS Lab's reports, which can be up to 1000 pages long and are very different from the SCL's.

Have reached out to NMS Labs; scheduled to have a conversation with them soon. Hoping to get more information about how their reports are organized. There have also been questions regarding whether testimony from NMS Lab analysts satisfies requirements of the Melendez-Diaz ruling. Have talked to SCL Counsel William Hart and Ombudsman Forte about these issues.

Garvin: Can you expound on the types of questions to the defense bar has put forward?

Rackley Olson: Challenging to wade through these lengthy reports, because we're not scientists. A lot of the information is quality control data. Unlike the SCL's reports, there's no index. NMS Labs is also using LCMS analysis and although SCL uses it sometimes, attorneys are not as familiar with that technology and there's a learning curve associated with that.

NMS Labs' reports have also included comments about the impairing effects of the substances that have been identified in the blood. Defense attorneys are not used to seeing that in the SCL reports and there have been questions about the qualifications of the analysts at NMS labs to be drawing these conclusions regarding the pharmacology.

Garvin: SCL can request that NMS not publish those comments in their report.

Byrd: John Dilday says we have done that, and those comments should not be appearing now. The report itself is only three pages. We would be more than happy to set up a working group with some defense attorneys and walk you through the report.

Rackley Olson: Would like to do that after my meeting with NMS, to discuss any remaining questions about the lab packages.

Director Byrd moved to adjourn, Marone seconded. The meeting adjourned at 2:12 pm.